

Notice of Allowability

Application No.

09/641,149

Examiner

Callie E. Shosho

Applicant(s)

WEINBERG ET AL.

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment and 1.132 declaration filed 4/21/04 and telephonic interview of 6/30/04.
2. ☒ The allowed claim(s) is/are 1-9 and 15.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 6/30/04.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Callie E. Shosho
Primary Examiner
Art Unit: 1714

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

(1) In the specification, page 1, after the title, and before "Field of the Invention" insert as a new paragraph "This application is a continuation-in-part of PCT/US00/04105, filed February 18, 2000 which claims the benefit of U.S. Provisional Application No. 60/120,671, filed February 19, 1999."

(2) Cancel claims 16-30.

2. Authorization for this examiner's amendment was given in a telephone interview with Tamera Fair on 6/30/04.

Statement of Reasons for Allowance

3. The present claims are allowable over the "closest" prior art JP 01170641 and Moss (U.S. 4,698,372) for the following reasons:

JP 01170641 discloses composition comprising polyacetal resin, 1-100 parts filler having average particle size of 0.05-10 μm such as calcium carbonate and 0.5-10% $\text{C}_{12}\text{-C}_{30}$ fatty acid or salt thereof. However, there is no disclosure or suggestion of the aspect ratio of the filler. Further, while JP 01170641 discloses that the calcium carbonate filler has average particle size of 0.05-10 μm , there is no criticality disclosed regarding the average particle size. This is especially significant in light of the comparative data set forth in Table 13 of the present specification. The data compares composition within the scope of the present claims, i.e. comprising calcium carbonate filler with average particle size of 0.7 μm , with compositions outside the scope of the present claims but within the scope of JP 01170641, i.e. comprising calcium carbonate filler with average particle size of 0.07 μm . It is shown that the composition of the present invention is superior in terms of Izod impact, i.e. impact resistance.

In order to meet the claimed limitation regarding the aspect ratio of the calcium carbonate filler, JP 01170641 was combined with Moss which discloses composition comprising thermoplastic polymer, fatty acid such as stearic acid, and calcium carbonate having equivalent spherical diameter of 0.1 to 5 μm and aspect ratio less than 2. However, there is no disclosure or suggestion in Moss of polymer comprising at least 95 mol% oxymethylene repeat units as required in all the present claims. Rather, Moss discloses the use of thermoplastic polymer that has flexural modulus less than about 200 MPa. However, as set forth in the 1.132 declaration

filed 4/21/04, polymer comprising at least 95 mol% oxymethylene repeat units has flexural modulus of above 1500 MPa. Thus, while Moss discloses the use of calcium carbonate filler with aspect ratio of less than 2, Moss requires the use of such filler in combination with thermoplastic polymer that has flexural modulus less than about 200 MPa which is in direct contrast to the present claims which require the use of polymer comprising at least 95 mol% oxymethylene repeat units which, as set forth in the 1.132 declaration filed 4/21/04, has flexural modulus of greater than 1500 MPa. Therefore, there is no motivation to combine JP 01170641 with Moss.

Thus, JP 01170641 and Moss, either alone or in combination, do not disclose or suggest the present invention.

Further, it is noted that applicants' amendment filed 4/21/04 overcomes the 35 USC 112, 2nd paragraph rejections of record.

In light of the above, it is clear that the rejections of record are untenable and so, the present claims are passed to issue.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Art Unit: 1714

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 571-272-1123. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Callie E. Shosho
Primary Examiner
Art Unit 1714

CS
7/1/04